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The Solicitors' Journal

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VOL. LXXVII. **Saturday, September 9, 1933.** No. 36

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Current Topics.

Chief Justice Holt.

In his admirable address to the Canadian Bar Association at Ottawa last week on "Commerce and the Law of England," Mr. Justice Roche, while fully recognising the immense debt we owe to Lord Mansfield for the moulding of the common law to meet the demands of the mercantile community, paid a well-deserved tribute to the juristic genius of Chief Justice Holt, who in many commercial questions anticipated the fuller work achieved by his successor. In Holt's day manufactures were just beginning to flourish; there was an increased exchange of commodities with foreign countries; and the colonies were rising into importance. In view of these facts and the need for responding to the requirements of the business section of the nation, Holt developed the law as to negotiable securities in a statesmanlike manner which earned for him the gratitude of the merchants of England. Not to speak of the part he played in the famous case of *Ashby* v. *White*, in which great constitutional questions were involved, it is enough to recall his decision in the well-known case of *Coggs* v. *Barnard*, where he expounded with admirable clarity the law of bailment and its various divisions. More than once he might have held the Great Seal, an offer which on each occasion he declined, saying that while he felt himself competent for the discharge of his then duties, he had never practised in a court of equity, or, according to another version, because he had had only one cause in Chancery, and as he lost that, he could not think himself qualified as an equity judge. To his legal knowledge he added a sense of humour, albeit of a somewhat dry character, as is illustrated in his handling of one of the "prophets" who were making some stir at the time. One of these fanatics having been committed for trial, another waited upon the Chief Justice with information that the Lord had appeared to him in a vision and told him to demand that the Chief Justice should direct a *nolle prosequi* in the case. To this Holt replied that he thought it very unlikely such a message should come from such a quarter, since it would be known there that the Attorney-General, and not the judge, had the responsibility of such a direction. This answer he followed up by saying that as Chief Justice he could grant a warrant committing his visitor to keep the other "prophet" company, a proceeding which he then and there adopted.

The Commercial List and New Procedure.

The tribute paid by Mr. Justice Roche to the work of Holt and Mansfield in modernising the law during the years of commercial expansion and industrial revolution in the eighteenth century was doubly deserved, having regard to the influences of the Commercial Court upon the recent reforms now which were brought about by the New Procedure Rules. During the greater part of the nineteenth century a large number of the commercial disputes of the country were disposed of by the common law courts sitting out of term at Guildhall in the City of London. This continued until the courts were moved from Westminster Hall to the Law Courts in the Strand in 1883. In 1895, on the recommendation of the Council of Judges three years previously, a list of commercial causes was initiated, to be dealt with by judges to be nominated by the Common Law Judges. Under the present practice of the Commercial Court all elaboration in pleadings and interlocutory proceedings was generally discouraged. The judges in charge of the list themselves dealt with applications or summons in chambers which would ordinarily be dealt with by a master or other official, and, strongest point of all, a date was fixed for trial. In the New Procedure List the procedure was closely modelled on that of the Commercial Court. We have always firmly held that the institution of the New Procedure List was a considerable step in advance in the expeditious settlement of commercial disputes, and the increase in the number of causes tried during 1931–32 is as much a proof of the success of the New Procedure as it is of the continued popularity of the Commercial Court. In view of the generally expected trade recovery the policy of the Legislature in extending the benefits of an abbreviated procedure can receive nothing but whole-hearted approval.

Death of a Witness during Cross-examination.

The death of a witness actually in the box and giving testimony, as reported in the Uxbridge Police Court last week, is no doubt an extraordinary, but it is not an unprecedented, occurrence. The witness in question was called for the prosecution on a charge of dangerous driving, and collapsed and died during his cross-examination. As a remarkable coincidence, the same thing occurred exactly two years ago in practically identical circumstances at Epsom, another witness for a prosecution on the same charge dying in court, and moreover, while still under cross-examination. Our note on this case appeared in our corresponding issue two years ago: "A Witness Dies Testifying" (75 Sol. J. 592). To find a precedent, we then had to go back a hundred years to an Irish case, *R.* v. *Doolin* (1832), Jebb C.C. 123. There again a witness for the prosecution died, and died under cross-examination, but the charge was the graver one of burglary, rendered still more serious in those days by the fact that it was then a capital offence. The judge admitted his evidence, and the prisoner was convicted and sentenced to be hanged. On appeal to a court of twelve judges, which appears to have corresponded to an Irish Court of Criminal Appeal, the conviction was affirmed by a majority of seven to five. It so happened, however, that the testimony of two other witnesses would, apart from that of the deceased, have warranted a conviction, and some of the judges based their decision on that ground. On the main point the judges were evenly divided, so it may be regarded as an open one. The cases as to the deaths of witnesses who may have partially given evidence out of court are collected in Vol. 22 of the "Empire Digest," p. 607. The testimony of aged witnesses "*de bene esse*" is, of course, taken to be used subject to the possibility that it cannot be

given in open court in the usual way. In *Bidder* v. *Bridges* (1884), 26 C.D. 1, application was made for the testimony of no less than thirty witnesses over seventy in this way, but allowed only in the cases of the score of them who were over seventy-five. *Hill* v. *Bulkeley* (1811), 1 Phillimore, 280, is an example of a civil case in which the evidence-in-chief of a witness who had died before cross-examination was received. In all such cases, of course, the evidence is received for what it is worth, and subject to the contingency that cross-examination might have discredited it.

Liability for Avoiding Collisions.

It is not often that a decision of the Admiralty Division is of general interest, though occasionally, as, for instance, in the case of *The Paludina* [1925] P. 40, there are exceptions in which some general principle is involved. The recent case of *The Lady Belle*, 49 T.L.R. 595, would appear to be such an exception. The facts of the case, excluding as far as possible considerations of the very technical maritime law and usage, were as follows: The plaintiff ship was approaching the defendant ship in fine clear weather and was under a duty to allow it to pass, but neither ship made the slightest effort to avoid the other, nor sounded any warning blast, and a collision occurred. The note to Art. 21 of the International Regulations for Preventing Collisions at Sea, speaking of the ship which has what we may call the right of way, says, "When . . . such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she shall also take such action as will best aid to avert a collision." This the defendant ship failed to do. Such a state of affairs as this may, of course, as easily arise on the road as on the sea, and the judgment of Langton, J., is for that reason very interesting indeed. He said that although it would be most unfair to judge the ship which has the right of way too harshly, for, as in a road accident, it is exceedingly difficult to decide the exact moment at which one is to depart from the ordinary rules in order to avert collision, it is impossible to absolve her from all blame when she has done nothing to avoid the collision. Her duty is to continue on her course until it is impossible for the collision to be avoided except by her; and it is submitted that this rule may well be applied to the road. It is interesting to note that the facts of this case are not dissimilar from those in *Baker* v. *Styles*, recently commented on in these columns (77 Sol. J. 578), but the results are decidedly different. In the Admiralty case the blame was apportioned, as to the plaintiff three-quarters and the defendant one-quarter; whereas the motor case resulted in an absolute victory for the defendant. If the Admiralty rules of apportionment applied to land cases it is at least arguable that the doctrine of "the last opportunity," which du Parcq, J., criticised in *Baker* v. *Styles*, would never have arisen.

Dispute about a "Mort Safe."

Few English lawyers probably know what a mort safe is, but a case which may end in litigation in Scotland will serve to familiarise Scottish lawyers with the nature of the object. A mort safe is a protective cover invented and used in the early part of the eighteenth century to foil body-snatchers. Whether the operations of this type of individual were very prevalent or not in that particular neighbourhood we do not know; but it seems that a number of these mort safes are to be found in Linlithgow Churchyard, and a proposal to present one to the Wellcome Historical Museum has aroused the anxiety of a local magistrate, who has petitioned the town council to prevent this from being done until the legal right of anybody to remove the relic has been decided. The protestant claims to be a descendant of a member of an ancient society known as the "Linlithgow Mort Safe Association" to whom these things belonged and by whom apparently they were installed in the churchyard; and it is alleged that the articles of association of this society declared that none of its mort safes should be allowed to leave the churchyard. An interesting legal problem would therefore seem to be in prospect for Scottish lawyers to solve.

Notice of a Public Inquiry.

A correspondent of *The Times* has recently made complaint as to the provisions respecting the advertising of public inquiries under the Public Health Act, 1875. He states that, on his remonstrance that a particular inquiry in which he was interested was virtually held *in camera*, for he saw no notice of it whatever, a certificate was produced for his inspection to the effect that handbills, 12 in. by 8 in., had been affixed to certain church notice-boards, "this being apparently all that the Act required." On going to the nearest church named, before the inquiry was concluded, he found no notice displayed. His letter raises various conundrums. He mentions that the scheme, the subject of the inquiry, was one for the construction of a swimming bath. In fact, the sections of the Public Health Act, 1875, which deal with notices of the local inquiries under the Act, namely, s. 176 (2) (as to purchase of land) and s. 297 (1) (as to the making of provisional orders by the Local Government Board, now the Ministry of Health) prescribe notice, not by church boards, but by advertisement in a local newspaper circulated in the district, in the one case for three consecutive weeks and in the other for two successive weeks. Is it then possible that the correspondent has made a mistake as to the matter involved? By s. 7 (1) of the Local Government Act, 1894, a parish meeting may adopt the Baths and Washhouses Acts, and by s. 9 (8) the above provision as to local inquiries under the Act of 1875 is made applicable to one under the Act of 1894. A notice by a parish council for the purposes of the latter Act, however, is to be given in the manner required for giving notice of vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner as may appear desirable to the council. By 58 Geo. III, c. 69, as modified by 7 Wm. IV and 1 Vict. c. 45, s. 2, the notice of a vestry meeting must be affixed to the principal doors of all churches and chapels within the parish. Provision for notice on church doors is also made by the Income Tax Act, 1918, s. 98, for the purposes of that Act. When everybody had to go to church, a notice on a church door was perhaps in the best place possible, but its utility is now more doubtful. There are penalties for destroying or defacing notices, but the Acts appear to be silent as to the effect of a notice which is at once torn down, or slips off.

"Hustling" the Leaseholder.

If the allegations made by a prominent London newspaper are even partly correct, something ought to be done to put a check upon the doings of syndicates organised to buy up the freeholds of blocks of small house property and then terrorize the leaseholders into parting with their leases for an inadequate sum under pressure of demands for the carrying out of dilapidations as the alternative to buying the freehold at an exorbitant price. This is an old dodge with which solicitors are familiar; but it would appear that the extensive building of leasehold property for sale to occupiers which has been going on during the last ten or twelve years has presented a specially favourable opening for this sort of roguery. Several times during recent years measures have been introduced into Parliament with the object of compelling the freeholder to sell his interest to the leaseholder at a defined valuation. There are undoubtedly objections to that system being generally adopted; but it is possible to conceive that its adoption within certain limits would be effective in putting a stop to the leaseholders' ramp now complained of. It is, indeed, already announced that a Bill is to be introduced into Parliament giving the occupying leaseholder first option of purchasing at an arbitrated valuation any freehold interest that is offered for sale. This might be a step in the right direction.

Security for Costs to be given by "Poor Persons."

A REMARKABLE SITUATION.

[CONTRIBUTED.]

THE writer of this article happened to overhear in the Court of Appeal recently an application *ex parte* for leave to appeal from the order of a judge in chambers affirming an order of the master directing that a "Poor Person" plaintiff in a High Court action should give security for £20 towards the costs of the defendant, or alternatively that the case should be remitted to the county court for trial. Leave was refused on the ground that the section under which the order was made gave a discretion in the matter with which the Court of Appeal would not interfere.

The section in question appears to be s. 2 of the County Courts Act, 1919, which reads as follows:—

> "In any action founded on tort commenced in the High Court the defendant may, on an affidavit made by himself or by any person on his behalf showing that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff, apply to the court or a judge for an order to transfer the action to a county court; and thereupon the court or judge, unless the plaintiff satisfies the court or judge that he has such means, may, if the court or judge, having regard to all the circumstances of the case, thinks fit so to do, make an order that unless the plaintiff within a time to be limited in the order gives security for the defendant's costs to the satisfaction of the court or a judge the action shall be transferred to such county court to be named in the order as the court or judge may deem the most convenient to the parties."

The Rules of the Supreme Court (Poor Persons), 1928, are to be found embodied in Ord. XVI, rr. 22 to 31 N, and they include r. 31 D.D., which refers to what is to be done when proceedings to which a "poor person" is a party are ordered to be transferred to a county court—thus recognising the applicability of s. 2 of the County Courts Act, 1919, to persons holding a "poor person's certificate." This, be it remembered, is a certificate admitting a poor person to take or defend or be a party to proceedings in the *High* Court. No provision has yet been made for a poor person to take part in any county court proceedings otherwise than by reference under s. 2.

Now the Supreme Court Rules contain no reference whatever to the giving of security for costs or to the deposit by the certificated poor person of any money by way of expenses, except in r. 23, which requires a deposit of £15 in certain matrimonial cases, and of £5 in others, to be utilised for necessary expenses—any surplus to be returned to the depositor. It would, therefore, appear that there is no rule of the High Court under which a certificated poor person can be ordered to give security for costs. Such security can, however, it has now been discovered, be ordered under s. 2 of the County Courts Act, 1919.

The position which has arisen in regard to the use thus being made of this s. 2 to transfer poor persons' cases to the county court as the alternative to compliance with an order for security would appear to be in need of early reconsideration and review if public opinion is not to be aroused on the subject. It is notorious that it has become a recognised practise to remit *all* poor persons' cases to the county court, save for very exceptional reasons. A very large number of these claims are claims for personal injuries received in "running-down" cases. Persons injured for life who, if entitled to damages at all, are entitled to far larger damages than are usually heard of in county courts, are being remitted in this very way almost as a matter of course. In fact the big insurance companies who, in these cases, are the real defendants (the compulsorily insured motorist being only the nominal defendant) have discovered that the "thing to do" when a statement of claim is delivered in a poor person's High Court action is to apply at once in chambers for an order under s. 2 asking for security for costs. This order being secured, half the battle is won. A county court jury of eight small tradesmen can be trusted not to have anything like the same idea of damages as a High Court jury of city men—consequently the damages are bound to be much smaller!

This ought not to be. Looked at in whatever light it may be regarded, it is making one law for the rich and another for the poor. An order against a certificated poor person to deposit say £25 as security for costs which cannot be awarded against a poor person simply means that a poor person who cannot find £25 is deprived of his right to have his case tried in the High Court, whereas if he were not too poor to find £25 that privilege would not be denied him.

But in this connection it is illuminating to read what the Court of Appeal has already had to say about security for costs when sought against a certificated poor person desiring their review of a High Court decision. In *Bottomley* v. *Woolworth and Co. Ltd.*, reported in *Weekly Notes* of 7th May, 1932, the plaintiff had brought a libel action against the defendants in which judgment had been given against him. Having no means wherewith to enter an appeal he obtained from The Law Society the necessary poor person's certificate setting out that he was not worth more than a certain sum, and that he had reasonable grounds for an appeal. He then entered the appeal, and the defendants at once applied for an order requiring him to give security for costs. Upon motion for that, Scrutton, L.J., in a judgment with which Greer and Slesser, L.JJ., concurred, made the following observations:—

> The defendants are moving for an order requiring the plaintiff to give security for costs. Whether that application can succeed depends upon the rules in Ord. XVI. The case of an appellant who does not prosecute his action in the court below as a poor person, but desires to appeal as a poor person in the Court of Appeal, is provided for primarily by Ord. XVI, r. 31 (*f*), but that refers back to earlier rules. Rule 23 states what the certificate must contain; r. 25 provides for the certificate being filed; r. 27 states that on the filing of the certificate a memorandum thereof is to be issued; r. 28 says that no court fee is to be payable in respect of the filing of the certificate or the issue of the memorandum; that the poor person is not to be liable for any court fees or costs; that no solicitor or counsel shall take or agree to take any payment, fee, profit or reward for the conduct of the proceedings. The result is that once the certificate is granted the poor person is not liable to pay costs, nor is he entitled to receive them. If the respondent to an appeal cannot get costs from the appellant poor person, it is difficult to see how the latter can be ordered to give security for costs which he will never be liable to pay. In these circumstances this court cannot make an order requiring the poor person who has obtained a certificate to give security for costs. The respondents, however, are not left entirely unprotected, as they can move under Ord. XVI, r. 29, to discharge the certificate, in which case the power to order security for costs would arise. On such an application it would be open to the court to consider not only the question of the poverty of the appellant, but also whether he had shown reasonable grounds for prosecuting an appeal. If it is desired to obtain an order for security for costs, the first step must be to have the certificate discharged.

Now, although this judgment related to a case in which the appellant had failed in an action in the High Court where he did not sue as a poor person, but had since obtained a certificate showing that he had no longer the means to carry his case to appeal, the principles so clearly set out in the judgment of Scrutton, L.J., surely apply with equal if not greater force

to the case of a person without means holding a certificate that justifies the bringing of an action in the High Court. It is true that at present no certificate can be given which will enable a poor person to start an action in the county court. Presumably the reason why no such provision has been made for the benefit of poor persons is to be found in the fact that where a poor person has a claim for some small amount coming within the ordinary jurisdiction of the county court, the cost of issuing a summons is so comparatively small that such a person could without difficulty find the sum required to enter the action, and, by so doing, would probably also secure legal guidance. No security for costs can be ordered in the county court, but where there is a substantial claim, possibly involving special damages exceeding £100, or where, in any event, the damages to be recovered, if any, must obviously be in excess of £100, so that it is not possible to enter a claim for such an amount as is properly recoverable, and The Law Society Committee, after investigating the case have certified that it is a proper one for High Court procedure, it is surely an intolerable thing that that decision should be overruled by the mere production of an absurd affidavit setting forth what is already well known—that the claimant is a person without means.

It is submitted that the true intent and purpose of the whole scheme for giving assistance to poor persons is that poverty shall no longer be a bar to securing justice—in other words, that rich and poor alike shall stand on an equal footing in the courts of justice. Applying that principle to the administration of s. 2 of the County Courts Act, 1919, it is submitted that the sole question to be considered is, not whether the plaintiff has any visible means of paying the defendant's costs if the action be unsuccessful, because the plaintiff cannot be ordered to do so, but whether the case *primâ facie* is or is not what The Law Society's Committee have already decided it to be, a suitable case for the High Court. In other words, if the defendant wishes to challenge the discretion of The Law Society's Committee in a poor person's case, he should be required to move under Ord. 16, r. 29, to discharge the certificate in manner laid down in the judgment of Scrutton, L.J., cited above. That would at least preserve a semblance of justice and common sense which is absent from the procedure under s. 2 of the County Courts Act, 1919, when applied to a case under the Poor Persons' Rules. It is again submitted that the proper use of s. 2 of the County Courts Act is the use for which the corresponding section of the Statute of 1888, which it superseded, was intended to deal with, viz., the checking of frivolous and expensive litigation by persons intent on speculation or vengeance or blackmail.

There is only one reasonable alternative to be suggested, and it is that The Law Society's Committee should be empowered to give a certificate which would authorise proceedings to be taken in the county court instead of in the High Court. The Committee could surely be trusted to decide whether the county court or the High Court would be the appropriate venue for a particular case. The careful and complete inquiry which the Committee make not only into the means of the applicant but also into the facts and circumstances of the case upon which the proposed claim is to be based, will largely be wasted time and trouble if the practice is to be continued to which exception was taken in the case which has given rise to the penning of this article.

[It should be added that there is a real and urgent need for consolidation of all the Rules of Court as to poor persons' procedure into one definite and clearly-worded Order. The confused state of these Rules is at present such as to make them quite unintelligible except to the lawyer possessed of ample time and leisure to " worry them out."]

Mr. Frederick Hinde, of Dulwich, S.E., and of Dr. Johnson's-buildings, Temple, E.C., a Bencher of Gray's Inn, and formerly for twenty years London editor of the *Yorkshire Post*, left £6,516, with net personalty £6,327.

Liability of Occupiers of Dangerous Premises.

LIABILITY TO LICENSEES.

In this article it is proposed to consider the liability of occupiers of premises to licensees, i.e., those who enter for their own purposes by permission of the occupier, and in whose entry the occupier has no pecuniary or material interest; in other words, guests. Such persons, it is well known, must, in common parlance, take the premises as they find them.

The leading case on the liability of occupiers of premises to licensees is *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74, in which the defendants owned a block of flats, letting them to tenants and retaining possession of the common staircase. The plaintiff, though resident in one of the flats, was not the tenant, but only his sister-in-law. The steps of the staircase were worn and dangerous, but this was obvious, and accordingly the House of Lords held that the plaintiff, being a mere licensee, had no cause of action. She must take the premises as she found them, with only this exception, that she was entitled to be warned of the existence on the premises of any danger known to the occupier and not known to her or discoverable by her by the exercise of reasonable care. This is what is commonly, and somewhat misleadingly, called a trap. In *Fairman's Case* (*supra*) the plaintiff knew of the danger, and accordingly could not recover.

There are, however, certain things which, though obvious if looked for, the licensee is entitled to assume to be safe. Such is the example given by Lord Wrenbury in *Fairman's Case* [1923] A.C., at p. 96, of a man who finds a staircase or a ladder intact in the morning and returns in the evening, when a step or a rung has been removed without his knowledge. That man is entitled to assume that all is still well in the evening.

There appears to be some question as to whether the duty to warn only extends to dangers actually known to the occupier or whether it also includes dangers of which he ought to know. In support of the former view is the dictum of Willes, J., in *Gautret* v. *Egerton*, L.R. 2 C.P. 371, at p. 375, where he likens the duty towards a licensee to that of the donor of a gift towards the donee. " The giver is not responsible for damage resulting from the insecurity of the thing, unless he knew its evil character at the time and omitted to caution the donee. There must be something like fraud on the part of the giver before he can be made answerable."

Although this dictum only refers to actual knowledge it is submitted that it must of necessity include constructive knowledge, and this is expressly stated to be so in *Fairman's Case* (*supra*) by Lord Atkinson, at p. 86, and by Lord Wrenbury, at pp. 96, 97. It is true that Bankes, L.J., in *Sutcliffe* v. *Client Investment Company* [1924] 2 K.B. 746, at p. 755, expresses the view that these dicta go too far and ought not to be taken as altering the law. It is also true that the other learned lords expressed no opinion on the point. It is also true that if this be the law the duty is no different from that owed to an invitee if *Indermaur* v. *Dames*, L.R. 1 C.P. 274, is to be interpreted as in *Cavalier* v. *Pope* [1906] A.C. 428, and *Brackley* v. *Midland Railway Company*, 85 L.J. K.B. 1596. But as has been submitted in a previous article, this is a strong reason for preferring the wider interpretation of *Indermaur* v. *Dames*, given in *Norman* v. *Great Western Railway* [1915] 1 K.B. 584, and if that case correctly expresses the law, then there is no reason why the liability to a licensee should not extend to dangers of which the occupier ought to know. Such an extension would, it is submitted, be in accordance with a principle which is almost always applied, for, after all, to say that a man ought to know something implies that he would know it but for some fault of his own which has prevented him acquiring the knowledge, and it would seem peculiar that an occupier could rely on his own fault, even

where a mere licensee is concerned. If the licensee is to be in any better case than the trespasser, then it seems illogical thus to limit his rights when the lack of knowledge may be entirely due to the fault of the occupier.

Finally, it is, of course, clear that once the licensee is on the premises he is entitled to be warned of any new source of danger knowingly created while he is there. It is also clear that he can recover in respect of any positive acts of negligent misfeasance done by the occupier or his servants. Both these propositions are clear from the judgment of Cockburn, C.J., in *Gallagher* v. *Humphrey*, 6 L.T. (N.S.), at p. 685.

It may be well to note that in England no different principle applies where the licensee is a child. The only difference is that it may be necessary to warn a child of dangers which would be obvious to an adult, while the child may be so young that a warning is useless, in which case the duty is to take all reasonable care to protect the child from risk.

Company Law and Practice.

Rectification of the Register of Members—II.

To continue with our consideration of the cases in which the court will exercise its summary jurisdiction under s. 100, we have seen that this jurisdiction only arises in two instances (sub-s. (1) (*a*) and (*b*)): (1) where the name of a person is without sufficient cause entered in or omitted from the register; and (2) if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company. We have furthermore already noticed that the section has been held to be not exhaustive, and that the court will order rectification in cases other than those expressly provided for by the section.

First of all let us take the case of a name being entered on, or omitted from, the register "without sufficient cause." There are a number of cases dealing with the question as to what is "sufficient cause" within the meaning of the section. It has been held by Kelly, C.B., in *Ex parte Ward*, L.R. 3 Ex. 180, that if a person has been induced by fraudulent misstatements or fraudulent suppression to become a member of a company, and thereupon his name has been entered upon the register, that entry has been made "without sufficient cause." And in *Ex parte Kintrea*, 5 Ch. at p. 99, Giffard, L.J., observes that it is clear that if there is a fraud, or if the transaction is such that it cannot stand, the name is on the register "without sufficient cause" within the meaning of the section. But if a person finds himself upon the register without sufficient cause, his remedy against the company is rescission and not an action for damages. The principle which allows a man, who has purchased goods on the faith of a fraudulent misrepresentation on the part of the vendor, to elect to retain the goods, and have an action against the vendor for any damage he has sustained as well, does not apply to shares or stock in a company. It was so held in *Houldsworth* v. *City of Glasgow Bank*, 5 A.C. 317, on the grounds that a person induced by the fraud of agents of a joint stock company to become a partner in that company can bring no action for damages against the company whilst he remains in it; his only remedy is *restitutio in integrum*, and rescission of the contract, and if that becomes impossible, e.g., by the winding up of the company or by any other means, his action for damages is irrelevant and cannot be maintained. But he must seek his relief within a reasonable time after he finds out that his contract to take shares has been induced by such a fraudulent misrepresentation, and in any event before the company is wound up. On the other hand, if the contract to take shares is void *ab initio* so that in fact there is no contract at all, but the person has been put upon the register as a member, the court will order rectification even after a winding up has commenced: see *Oakes* v. *Turquand*, L.R. 2 H.L. 325. In such a case it is sufficient for the person whose name appears upon the register to deny that he ever became a shareholder, and to leave the company to prove that he is one if it can. His denial is a sufficient repudiation, and he is not barred by laches if the company does not act at once, and the question does not arise until after the winding up: see *Gorrissen's Case*, 8 Ch. 507. On the other hand, where the person's name has been put upon the register as a result of some misrepresentation on the part of the company, proceedings to have the register rectified must be brought within a reasonable time, or else the applicant may find himself barred from relief under the doctrine of laches. If he waits for three months after knowledge of the misrepresentation, he may be held to have acquiesced in the position in which he finds himself, and to have waived his *primâ facie* right to have the contract to take the shares set aside. In the words of Lord Davey in *Aarons Reefs Ltd.* v. *Twiss* [1896] A.C. at p. 294: "Where a person has contracted to take shares in a company and his name has been placed upon the register, it has always been held that he must exercise his right of repudiation with extreme promptness after the discovery of the fraud or misrepresentation, for this reason; the presence of his name on the register may have induced other persons to give credit to the company or to become members of it." In these cases the contract between the company and the alleged shareholder is not void *ab initio*, but voidable only, and therefore the shareholder must be careful to see that he does not acquiesce in the position into which the fraud or misrepresentation has placed him. As to what period of time is sufficient to bar the claim to rectification, there is considerable authority, which shows that the court will, as it does in exercising all purely equitable remedies, consider the facts of each individual case. The rule in these cases is that the shareholder must not only repudiate, but must get his name removed from the register, or commence proceedings to have it removed before the company is wound up. The onus, where the contract is voidable and not void, is upon the shareholder to take proceedings as soon as he has knowledge of the fraud or misrepresentation, or is put upon enquiry. That the shareholder whose name has been thus put upon the register must take proceedings to have it rectified is clearly demonstrated by the case of *First National Reinsurance Co. Ltd.* v. *Greenfield* [1921] 2 K.B. 260. In that case the company made a call, and the defendant wrote to the company in answer saying that owing to a misrepresentation in the prospectus he declined to pay the call, and requested the company to refund the amount he had already paid on his shares. In an action by the company for the amount of the calls, it was held by McCardie and Lush, JJ., that it was not sufficient for the defendant to say that he had repudiated the contract to take shares on the ground of misrepresentation in the prospectus. In order to succeed he should have been able to show that not only had he repudiated the contract, but that he had, after discovering the misrepresentation complained of, taken prompt steps to have his name removed from the register of the company.

Although a shareholder may be barred by laches and acquiescence from succeeding in his application, one must not lose sight of the fact that, where there has been material misrepresentation or suppression, he has a *primâ facie* right to relief. He need not, moreover, explain the exact mental process which induced him to act upon the misrepresentation—see Lord Halsbury's words in *Aarons Reefs* v. *Twiss* (*supra*). It is a question for the jury to determine upon the evidence whether or not the person was in fact deceived by the misrepresentation. Neither need the misrepresentation have been the sole reason why he was induced to take up shares. It is sufficient for him to show that he acted upon it *inter alia*.

Before going on to discuss what amounts and what does not amount to a misrepresentation sufficiently material to entitle a shareholder to relief, it may be convenient, first of

all, to consider the position of a director who induces a person by fraud to subscribe for shares. Directors are agents of the company, and the ordinary rules governing the liability of principals or masters for the torts of their agents or servants apply. The law on the subject is reviewed very extensively in the case of *Lloyd* v. *Grace Smith & Co.* [1912] A.C. 716. That case decided that the principal is liable for every tort committed by his agent while the agent is purporting to act within the scope of the business which he is authorised, or held out as authorised, to transact on behalf of his principal. And so a director in making false representations within the scope of his authority as director will render the company liable. But if he exceeds his authority and commits torts in the course of business which he had no authority, and the company did not hold him out as having authority, to negotiate, the fraud of the director will not be imputed to the company. We may note in passing that the secretary of a company has no authority to make representations, and that no person can or ought to assume that he has any authority to represent anything at all—see per Lord Esher, M.R., in *Barnett* v. *South London Trams*, 18 Q.B.D. 817. The misrepresentation inducing the contract must be made by a party bound by the contract, and it is an elementary rule of the law of contract that a contract between two people induced by the misrepresentation of a third is nevertheless binding. And so, if a person takes shares in a company upon the faith of representations as to its financial strength put forward by someone who has in fact no authority from the company, either express or implied, he will not be entitled to relief against the company.

(*To be continued.*)

A Conveyancer's Diary.

Business of Testator carried on by Executors: Right to Compete.

A CASE which has lately caused me some trouble in that it is not certain as to how far it goes and how it can be applied in relation to other circumstances is *Re Thomson; Thomson* v. *Allen* [1930] 1 Ch. 203.

So far as regards the point with which I am concerned in this article, the facts were somewhat peculiar, although the principles which were applied are well established. As usual it is not the difficulty of ascertaining the general principles which causes trouble, but the application of the principles to the facts of a particular case.

By his will the testator, who at the date thereof was carrying on the business of a yacht broker, appointed the plaintiffs, namely, his daughter B and one W, and the defendant executors and trustees thereof, and directed them to carry on his business after his death, and in the event of a sale thereof by the executors the whole of the proceeds were bequeathed to B. The testator died in August, 1928, and his executors, in pursuance of the directions contained in the will, carried on his business until February, 1929, when the testators' tenancy of the business premises being about to expire, they removed the business to other premises, a lease of which was shortly afterwards granted to the defendant alone, of which lease the plaintiffs did not become aware until a few weeks after the grant thereof, when the defendant claimed the right to hold the lease of the new premises for his own benefit, to exclude the plaintiffs from the new premises and to set up and carry on on his own account a similar business. Eventually, however (after the writ was issued), the business was assigned to B and the defendant also assigned the lease of the new premises to her.

The plaintiffs claimed not only that the lease of the new premises was held by the defendant in trust for the executors, but also to restrain him from carrying on business of a similar kind to that of the testator so long as the executors were carrying on that business.

The defendant had been employed by the testator in his business, and it was not disputed that the defendant could have severed his connection with the testator at any time and have set up a competing business on his own account.

It was largely upon the nature of the business that the judgment to which I will presently refer rested. In that respect the learned judge seems to have accepted the following description of the business which was stated in the defence: "The business of a yacht agent or broker is similar to that of a house agent, i.e., the yacht agent receives or solicits the order or permission of yacht owners to place their yachts on his books, and having ascertained by enquiry or advertisement a prospective purchaser of any particular yacht, obtains and submits an offer to the owner, and is paid a commission by him if a sale results. The greater part of the yachts for the time being on the market are therefore on the books of all yacht agents, and that agent earns a commission on the sale who can first secure a purchaser. Every yacht agent consequently carries on business which competes with every other yacht agent. The business of the testator was of the character of those of all other yacht agents in this paragraph described and the testator had no regular or exclusive connection."

Clauson, J., held that having regard to the special nature of the business of a yacht broker, which necessarily involved competition between every individual broker with all the others, it would have been a breach of his fiduciary duty towards the beneficiaries under the will if the defendant had at the date of the issue of the writ set up on his own account an independent business of a yacht broker. The defendant was therefore ordered to pay the costs.

It would seem to follow that the same would apply to the business of a house agent.

The unfortunate defendant in such a case is therefore put in the difficult position of not being able to earn his living at the business in which he has become experienced simply because he has accepted the office of an executor of one who carried on a similar business. That is, he would be so prevented so long as the testator's business was carried on.

It is true that in *Re Thomson* the defendant had not at the date of the death of the testator started any business on his own account, but I find nothing in the judgment to indicate that if he had he could have continued that business so long as he and his co-executors were carrying on the business of the testator. And I may add that the judgment did not turn upon the fact that the defendant was employed by the testator at the time of his death. The learned judge applied the principles laid down by Cranworth, L.C., in *Aberdeen Railway Co.* v. *Blakie Brothers.*

That case dealt with the fiduciary relation which arose from the fact that the person concerned in the case was the director of a corporate body.

Lord Cranworth said: "A corporate body can only act by agents, and it is, of course, the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting. Such agents have duties to discharge of a fiduciary nature towards their principal. And it is a rule of universal application that no one having such duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those whom he is bound to protect."

It was upon that principle that Clauson, J., appears to have based his judgment.

It is true that the learned judge said that he only reached the conclusion which he did on the facts as to the peculiar nature of the business as stated in the paragraph in the defence to which I have referred.

It seems to me, however, that there are innumerable cases where the business may not be of so peculiar a nature in which the same reasoning would apply.

It seems to behove business men, therefore, not to accept executorships of persons carrying on a similar business to their own. That is especially so where the executor is one employed in the business of the testator and not precluded by the terms of his employment from starting on his own account.

Landlord and Tenant Notebook.

Interpreting the Agricultural Holdings Act.

"It is a matter for regret that that Act [the Agricultural Holdings Act, 1923], intended to be the charter of the agricultural and market garden tenants, is expressed in language which is difficult for even a trained lawyer to understand," said Macnaghten, J., in *Saunders-Jacob* v. *Yates* [1933] 1 K.B. 392, at pp. 397-398. And, indeed, the statute reads as if, instead of having been drafted by lawyers and passed for the benefit of farmers, it had been written by farmers with a view to benefiting lawyers.

Now there are at least two rules of interpretation which might be expected to apply in the case of such an enactment as the Agricultural Holdings Act. On the one hand it is an Act intended, as Macnaghten, J., observed, to be the charter of farm tenants; this circumstance calls for liberal interpretation. On the other hand, it is a penal statute, depriving certain individuals of their common law rights: this is a ground for strict interpretation. The conflict has been very apparent in recent years, the Court of Appeal having had to adjudicate on a number of claims for disturbance and other claims in which technicalities have been ignored, sometimes because parties had endeavoured to operate the statute themselves or with the assistance of estate agents only.

What, for instance, is meant by "particulars" of a claim which have to be delivered, as enacted by s. 16 (2), when recourse is had to arbitration in accordance with s. 16 (1)? In *Jones* v. *Evans* [1923] 1 K.B. 12, C.A., the Court of Appeal declined to commit itself to a definition, but laid down that the provision called for less than would be required in the case of a common law action. On the positive side, the court held that the particulars must indicate the nature as opposed to the class of claim: sub-s. (1) provides for a vast number of matters to be referred to arbitration. This case concerned a landlord's claim for dilapidations, the particulars of which had been supplied under a number of heads, the whole document presenting a remarkable confusion of references to claim, to remedy, and to evidence. It was held, however, that nothing like a schedule of dilapidations need be supplied; for, if particulars were scanty, the arbitrator could always ask for more, and it was pointed out that failure to supply particulars involved the barring of the claim.

In *Re O'Connor and Brewin's Arbitration* [1933] 1 K.B. 20, C.A., a tenant who had given notice of his claim for compensation for disturbance and supplied particulars which read "Particulars . . . Disturbance . . . Two years' rent . . . £514 0s. 0d.," saying nothing about any expense occasioned by his having to quit, relied upon the last-mentioned decision; but the Court of Appeal promptly drew the line, holding that this statement was essentially general as opposed to particular, and merely indicated the class as opposed to the nature of the claim. At the same time Lord Hanworth, M.R., pointed out, as Bankes, L.J., had pointed out in *Jones* v. *Evans*, that the Act did not require the particulars to be given in writing!

A case in which the tenant scored was *Howson* v. *Buxton* (1928), 139 L.T. 504, C.A., The question was whether notice of intention to claim for disturbance given by one of two joint tenants was valid. The Court of Appeal held that it was—in the circumstances. These were that the farm had originally been held, for many years, by one W; it was then, after some negotiations, let to W and B as joint tenants, but it was B who provided the finance and who subsequently occupied the farmhouse (W living in and paying rent for a cottage belonging to the landlord, but not on the holding), and it was after W had given notice to quit on his own (the validity of which the court doubted) and the landlord had replied by giving notice to quit to both, that B served a notice of claim purporting to be on behalf of both. Dealing with the issue which arose, Scrutton, L.J., said: "In construing an Act of Parliament, besides looking at the words used, you are entitled to know the mischief which the Act was intended to remedy and to construe the words used, if possible, in such a way as shall suppress the mischief and advance the remedy," and he cited the example of the interpretation of "single woman" in the Bastardy Laws Amendment Act, 1872, to include a married woman living apart from her husband. Section 12 of the A.H.A., 1923, was clearly intended to give a right of compensation in respect of expenses of removal to a tenant who was turned out; in this case it was B who had incurred all the expense and his notice was good.

But *Selleck* v. *Hellens* [1929] W.N. 4, C.A., went the other way, and may, indeed, be described as a hard case. A tenant had demanded arbitration as to rent, mentioning his idea of the right amount in a covering letter. The landlord wrote in reply that he would not agree to that figure. The tenant then gave notice to quit, saying that he gave it by reason of the landlord's refusal to agree to his demand for arbitration. Section 12 (3) entitles a tenant who gives notice to receive compensation for disturbance if the landlord refuses or fails within a reasonable time to agree to have the amount of rent decided by arbitration, provided his notice to quit states the reason. The arbitrator in this case found as a fact that the landlord had failed within a reasonable time to agree, etc. The court held that the notice would not do. Scrutton, L.J., felt some doubt, but was forced to the conclusion he arrived at by the consideration that the Act was a penal statute, derogating from contractual rights, and not a commercial document. At the same time he pointed out that a notice "because of your refusal and/or failure" would suffice; a useful thing to know, as it is sometimes difficult to decide which would be the proper description. Another piece of judicial advice was the suggestion that a party demanding arbitration should at the same time submit the name of an arbitrator.

Sub-section (1) of the same section exonerates a landlord who gives notice to quit from the obligation to compensate for disturbance if he gives notice for one of several approved reasons, which are set out in tabular form, (*a*), (*b*), etc. In *Re Digby and Penny* [1932] 2 K.B. 491, C.A., it was held that a notice worded "In accordance with s. 12, sub-s. 1 (*a*) and (*b*) of the Agricultural Holdings Act, 1923," etc., sufficed—though, in view of the "provocation," the landlord was deprived of his costs. Incidentally, I have often wondered what use sub-s. (9), which provides for reasons to be stated on the tenant's demand, can be. It seems to me that a tenant who receives a notice not mentioning any reason had far better imitate the attitude of the Noble Six Hundred than that of the Twenty Thousand Cornishmen who were so concerned about Trelawney.

This brings me to *Rigby* v. *Waugh and Evans* (1931), 145 L.T. 137, C.A., which may be said to illustrate the natural limitations of the principle of construing a statute according to the mischief it was intended to remedy. By s. 26 a notice to quit given by a landlord is annulled by a subsequent contract of sale, unless the tenant agrees in writing before the sale that it shall be valid. This case arose out of a sale by the executors of a landlord after they had given notice to quit, acknowledged by a letter in which the tenant had said: "We are sorry to leave, and will give up possession, etc, on" [the dates named in the notice]. When the tenant claimed

for disturbance, the executors contended that a subsequent sale had invalidated the notice; but the court held (reversing the county court judge) that no formal words were necessary, and it was clear that the tenant had acknowledged the notice as one on which he would act. And, as to the mischief, the court were unable (as a former court had been) to see what mischief Parliament had intended to remedy! The matter is, indeed, obscure—if I may venture upon a conjecture, I would suggest that our legislators were probably concerned about the possibility of a landlord escaping liability for compensation. Unjustifiably concerned, it may be—but that's another matter.

Our County Court Letter.

THE TITLE TO APPARENT EASEMENTS.

THE effect of a conveyance from a common owner was recently considered at Basingstoke County Court in *Maturin* v. *North*, in which the claim was for £5, as damages for trespass, and an injunction. The plaintiff's case was that (1) by a conveyance of the 6th March, 1931, she was the owner of certain land, upon which there was a pond, with a bank three and a half feet high; (2) on the 14th October, 1931, the defendant (an adjoining owner) cut the bank and lowered the level of water; (3) on the 13th March, 1933, she erected a substantial structure (to preserve the bank), but the defendant demolished it the same day. The defendant's case was that (*a*) he had lived on his premises since December, 1919, when there was no bank; (*b*) the latter had only appeared since the plaintiff bought her property, and the damming of the outflow from the pond had caused flooding of his premises; (*c*) he was therefore entitled to remove the obstruction. Corroborative evidence was given by the agent to the Mildmay Trustees, who had conveyed the land (now owned by the plaintiff) to her predecessor in title on the 20th January, 1921, but, on the 17th January, 1921, they had already conveyed to the defendant's landlady the property now occupied by him. His Honour Judge Barnard Lailey, K.C., observed that, although the dam stood on the plaintiff's land, there were further relevant facts, viz., (1) when the common owner conveyed the land to the defendant's landlord, there was an unobstructed flow of water through the ditch bounding the defendant's land; (2) this was a continuous and apparent easement, and the plaintiff's vendor took the land subject thereto; (3) the plaintiff's title was subsequent to that of the defendant's landlord, and the dam erected by the plaintiff (in March, 1933) was an obstruction of and interference with the flow of water. It was therefore held that the defendant was entitled to remove the dam, and judgment was given in his favour, with costs. The cases on another aspect of this subject, viz., disturbance of rights of way, were reviewed by a Divisional Court in *Liddiard* v. *Waldron* [1933] W.N. 161.

THE RIGHTS AND LIABILITIES OF MONEYLENDERS.

IN the recent case of *Jones* v. *Nugent* at Burton County Court, the claim was for £50 as damages for trespass, and the counter-claim was for £13 13s. 8d. as the balance due under a bill of sale. The case for the plaintiff was that (1) he had given the bill of sale to secure £30 and interest, but (by reason of the deduction of £1 for expenses) only £29 had been received; (2) he had repaid £29 10s., but nevertheless a bailiff had been in possession from the 6th until the 17th May; (3) the alleged bill of sale (having no receipt clauses) was void, and proceedings thereon had eventually been restrained, by an interim injunction; (4) in the meantime the bailiff had been housed and fed for eleven days. The defendant's case was that (*a*) the full amount of £30 had been advanced; (*b*) by a printer's error, the whole of the issue of printed bills contained the above omission, and the plaintiff was making the most of a technicality; (*c*) on submitting to the injunction, the defendant had offered £5 as damages; (*d*) although a promissory note was the usual security, it had been deemed advisable to take a bill of sale from the plaintiff, and interest might reasonably be claimed at 48 per cent. His Honour Judge Longson observed that (1) on the defendant's admission, the injunction would continue; (2) the defendant had nevertheless proved an unsecured loan for £30. Judgment was given for the plaintiff for £25 and costs, and in favour of the defendant for interest to an amount to be calculated at 5 per cent., with costs. The question of burden of proof (as to whether interest is excessive and the transaction harsh and unconscionable) was considered by the full Court of Appeal in *Mills Conduit Investment Co.* v. *Leslie* [1932] 1 K.B. 233.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Solicitors Act, 1933—Draft Rules.

Sir,—The strict observance of the prohibition at the end of r. 4 (*a*) is likely to cause inconvenience. Take the case of a purchase; it is very unusual for the purchaser to have provided his solicitor with the exact sum required on completion, so that if more money be required two bankers' drafts would have to be bespoken, one debited to the client's account and the other to the solicitor's own account. Then when the purchaser-client makes good the deficit the amount has first to be paid into the client's account and then transferred to the solicitor's.

It is not an infrequent experience in other matters for a client from pure carelessness to make out a cheque for a different amount than that required, e.g., where £3 6s. 4d. is asked for, to get £3 4s. 6d. What is to be done under the rules? Draw £3 4s. 6d. on client's account and 1s. 10d. on another?

The Powers That Be have not (and they seldom do) considered the small man, who has to write up his own books, and what a lot of unnecessary work is going to be thrown on him. The big firms with a head-cashier and staff have not to trouble; and they also have always the inestimable advantage of pleading, if any rule is broken, that the failure to observe it was not within their actual knowledge.

The Act is law and we must abide by it; but the rules should be made as workable and elastic as possible and not create fresh crimes. As a personal expression of opinion after half a century in the law, I think that the Act is really a despicable piece of legislation; it is a mere piece of camouflage to create a sense of false security. But I fear our legislators are always more concerned to hoodwink the electors than to tell them the truth. The Act only creates new technical crimes—a man who is going to misappropriate funds is not going to be concerned at the possibility of having preferred against him a further charge that he had not conformed to some rules of accountancy. The plea of unwitting misappropriation is always convenient; it is a mere excuse not got over by keeping one separate banking account for all clients' moneys. If I draw a cheque for myself on the "client's account"—(and there is nothing to prevent me)—then which client's money have I taken? Surely I can still say "I wit not."

The Act and the rules will soothe the general public, but in a short time I believe they will be only very elastically observed, because of the inconvenience of a strict adherence—the system of two accounts may be retained as already in so many cases voluntarily adopted (I am told clients "like to see" the words "Clients A/c"!), but the rigidity of rules as to what one may or may not do will not be observed. It will be a practical impossibility to have freely roving inspectors; one will only be sent if a complaint is made by an anxious client. If your rogue has misappropriated he will know it is time then to go.

25th August. A BACK NUMBER.

Sir,—It seems quite clear that the draft rules issued by The Law Society will need amendment. Rules 3 and 4 will make the keeping of solicitors' accounts much more cumbersome without attaining the desired effect of protecting the client against the dishonest practitioner.

Rule 1 is quite sound, and I would amend r. 2 to the effect that a separate "office" account must be kept by the solicitor for his office business, distinct from his "private account," and direct that no moneys shall be withdrawn from the office account, on account of profits, until the office accounts are made up at the end of the year, or half year, as the case may be, and then only if the accounts show that there is enough money to pay the clients all moneys held on their behalf.

"Kain's" system of bookkeeping is so simple and effective that I fail to see what more is required.

In the case of amounts received on behalf of clients, which are not to be disbursed almost immediately, the money should be placed on deposit in a bank.

It has been suggested that most solicitors do not understand accounts. As far as my experience goes this is very far from the truth, but if any solicitor is so ignorant of account keeping as not to be able to understand and keep, himself if necessary, his office accounts on "Kain's" system, then he is not fit to have moneys entrusted to him and should not be allowed to practise on his own account.

My suggestions for curbing the criminal propensities of the dishonest practitioner are that membership of The Law Society should be compulsory—all the local law societies should be abolished as such and become local branches of The Law Society. Each branch should have a disciplinary committee to whom cases of doubt could be referred and enquired into. The proceedings should be private and the committee have power to call the member complained of before them and to inspect his books, etc. If things are found to be in order, no one beyond the members of the committee need know anything of the matter; but if not, then the case should be referred to a central disciplinary committee in London.

By some such arrangement as I have outlined it should be possible to obviate 99 per cent. of the cases of default, and it only remains to be seen whether the profession will shoulder the responsibility of setting its house in order and of effectively dealing with unsatisfactory members, or not.

Malton, E. Stanley Jones.
7th September.

Obituary.

His Honour Judge BRADLEY.

His Honour Judge Francis Ernest Bradley, County Court Judge of Circuit No. 4, died at Eastbourne on Sunday, 3rd September, at the age of seventy-one. Judge Bradley was educated at Manchester Grammar School and at Owens College, Manchester, where he became Dauntesey Law Scholar in 1886 and Associate in 1888. He was called to the Bar by Gray's Inn in 1889, and practised on the Northern Circuit and in the Palatine Court of Lancashire. He was appointed Judge of the North-West Lancashire Circuit in 1921. In 1923-24 he was Master of the Worshipful Company of Glaziers.

Sir CHARLES MAJOR.

Sir Charles Henry Major, for twelve years Chief Justice of British Guiana, died on Thursday, 31st August, at the age of seventy-three. He was called to the Bar by the Middle Temple in 1887, and became Attorney-General of Grenada. He was appointed Chief Justice of Fiji and Chief Judicial Commissioner for the Western Pacific in 1902, and he was Chief Justice of British Guiana from 1914 to 1926, when he retired. He was knighted in 1911.

Mr. H. W. DAVIES.

Mr. Herbert Wyatt Davies, solicitor, of Throgmorton-avenue, E.C., died on Wednesday, 6th September, at the age of seventy-eight. Mr. Davies was admitted a solicitor in 1882.

Mr. J. T. JACKSON.

Mr. Joseph Thornthwaite Jackson, solicitor, of Devizes, died recently at his home at Devizes. Mr. Jackson, who was admitted a solicitor in 1886, was Town Clerk of Devizes for 35 years, retiring from that position six years ago.

Reviews.

The Journal of Comparative Legislation and International Law. August, 1933. Issued to Subscribers only.

This part is mostly taken up with a review of legislation in the British Empire, but it also includes France, Denmark and the United States.

The unhappy economic conditions of the world are widely reflected in the laws by which some attempt is being made to meet them. As, however, they mostly have the effect of further restricting trade and intercourse, too much hope need not be felt as to the law-makers' power by words to make good mankind's active follies.

One interesting development in criminal law in France is the law of 2nd July, 1931, which gives persons maliciously prosecuted the right to apply directly to the criminal court itself for damages.

For the picturesque one goes to Palestine and Iraq. A British Order in Council affects to regulate access to the Wailing Wall, and Iraqi law takes up the locust war.

Books Received.

500 *Points in Club Law and Procedure.* Ninth Edition. 1933. F'cap. 8vo. pp. (with Index) 168. London: The Working Men's Club and Institute Union, Ltd. 2s. 9d., post free.

Tax Cases. Vol. XVII. Part X. 1933. London: H.M. Stationery Office. 1s. net.

The Rent and Mortgage Interest Restrictions Acts, 1920-1933. By T. J. Sophian, of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1933. Royal 8vo. pp. xxi and (with Index) 230. London: Sir Isaac Pitman and Sons, Ltd. 10s. 6d. net.

County Court Practice Made Easy, or Debt Collection Simplified. By A Solicitor. Seventh Edition. 1933. Crown 8vo. pp. x and 151. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Knowle's Evidence in Brief. Fourth Edition. 1933. By Albert Lieck, Chief Clerk of the Bow Street Police Court, London, and S. Lieck, LL.B. Crown 8vo. pp. xxvi and (with Index) 158. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Law of Education.—By H. J. Simmonds, C.B., C.B.E., of Lincoln's Inn, Barrister-at-Law, and A. W. Nicholls, M.A., B.Litt., of Gray's Inn and the South Eastern Circuit, Barrister-at-law. 1933. Royal 8vo. pp. xxv and (with Index) 266. London: Sir Isaac Pitman & Sons, Ltd. 16s. net.

CORRECTION.

In the review of the *Annual Digest of Public International Law Cases,* 1923-1924, which appeared at p. 615 of the issue of 2nd September, reference was incorrectly made to "the extinction of the American Republic." This should be "the extinction of the Armenian Republic."

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Will dated shortly before 1926—Executors and Trustees for Sale identical—Whether an Assent upon trust for Sale is essential.

Q. 2812. A testator who died on 1st December, 1925, by his will appointed A and B executors thereof, and devised to them a freehold house upon trust for sale. The will was proved on 13th January, 1926. By a conveyance dated 9th June, 1926, A and B after reciting the will of the testator (including the devise to them on trust for sale), the death of the testator and proof of his will, an agreement by them " as Trustees of the said Will " to sell the property to C, went on to convey the property to C " in execution of the said trust for sale and as Trustees." The conveyance contains no reference to any assent by A and B to the property vesting in themselves on trust for sale nor any acknowledgment for production of probate of the will. It may be taken that in fact no such assent was ever made. Your correspondents are acting for a purchaser of the property from C, and wish to know—

(*a*) Whether they are right in objecting to the title on the ground that there should have been an assent by A and B to the property vesting in themselves as trustees for sale, coupled with an endorsement on the probate and an acknowledgment for its production ; and

(*b*) What steps should be taken to overcome the difficulty ?

(*c*) What is the present legal position with regard to the title ?

A. This query raises the vexed question as to whether when personal representatives and trustees are the same persons it is necessary for them in their former capacity to assent in their own favour in their latter capacity. Before 1926 this was not, of course, necessary, and seeing that they have the legal estate it is probably not necessary (though eminently desirable) now. There is an indication in the L.P.A., 1925 (see Sched. V, Form No. 9) that the draftsmen of the Act considered such an assent desirable, and such cases as *Re Cugny's Will Trusts* [1931] 1 Ch. 305, and *Re Yerburgh* [1928] W.N. 208, point in the same direction. We express the opinion that in view of the fact that the vendors in our subscribers' case had the legal estate, and in view of the wide provisions of L.P.A., 1925, s. 63, they conferred a good title by the conveyance of 9th June, 1926. They were certainly in a position to agree to sell as trustees, and the introduction of the words " as trustees " into the operative part of the deed was not to restrict the effect of that part of the deed, but merely by the use of these words of art to import the appropriate covenant for title. On the basis of this opinion the replies to the specific questions are—

(*a*) We do not think so, though a note of the sale should have been endorsed on the probate, as the vendors had a double capacity, and may have passed the legal estate as personal representatives, though nominally selling as trustees for sale.

(*b*) We suggest that the probate should now be suitably endorsed.

(*c*) We do not consider the title defective and are of the opinion that it could be forced upon an unwilling purchaser.

Pre-1926 Conveyance to Two—Declaration of Trust by the One for the Other—Post-1925 Death of the Trustee—Position—Title.

Q. 2813. In 1910 a small freehold cottage was conveyed for valuable consideration to Mr. and Mrs. A. By a contemporary declaration under seal Mr. A. declared that the property had been purchased by Mrs. A. out of moneys belonging to and forming part of the separate estate of Mrs. A., and that the share estate and interest conveyed to him should be held by him as her trustee and on her behalf. Mr. A. has died intestate in 1933. Assuming that Mr. A. did not possess any other estate is it necessary (1) to take out letters of administration or (2) for Mrs. A. or Mr. A.'s administrators (if any) to execute any document to vest the property in Mrs. A. ? If the answer to (2) is Yes, can you refer us to a precedent ?

A. If the assurance to Mr. and Mrs. A. rendered them joint tenants in fee simple, then as Mrs. A. is the survivor of joint tenants solely and beneficially interested she can deal with her legal estate as if it was not held upon trust for sale (L.P.(Amend.) A., 1926, Schedule amendment of L.P.A., 1925, s. 26), and no action seems needed. If, on the other hand (and as seems the more likely), they were thereby rendered tenants in common in equal or other shares, then we express the opinion that the transitional provisions of L.P.A., 1925, did not operate to vest the legal estate in the entirety in Mrs. A., for L.P.A., 1925, Sched. I, Pt. II, does not operate to vest any legal estate in a person for an undivided share (L.P.A., 1925, Sched. I, Pt. II, para. 7 (*f*)). It would not be the case of one legal estate merging in another so as to bring L.P.A., 1925, Sched. I, Pt. II, para. 2, into play. On the 1st January, 1926, therefore, the position was that one moiety was vested in Mr. A., upon trust for his wife, while the other moiety was vested in his wife, with the result that the legal estate vested in the Public Trustee (under L.P.A., 1925, Sched. I, Pt. IV, para. 1 (4)). We suggest that Mrs. A. should now appoint herself trustee to oust the Public Trustee and by the same deed declare that she henceforth elects to hold and will hold the property free from the trust for sale affecting the same. We regret that we cannot quote a precedent on these lines.

(1) It is thus not necessary in connection with this matter to obtain a grant in the estate of A.

(2) See above.

Liability for Damage by Blasting Operations.

Q. 2814. Some clients of mine are the owners of a quarry from which stone is extracted, and which is worked under the provisions of the Quarries Act, 1894. The getting of the stone necessitates blasting operations, and such operations are having the effect of shaking houses belonging to various owners nearby, and such shaking is causing dislocations of plaster from ceilings, etc. The property was conveyed to my clients merely as land, but it has for many years been used and worked as a quarry as previously mentioned. A point has arisen as to the liability of my clients for damage caused by the blasting operations before mentioned, and whether and to what extent such liability is limited by my clients working the quarry in pursuance of their statutory powers under the Act referred to. I am informed that the quarry was visited by a mining inspector some time ago, who informed my clients that their operations were quite in order. I shall be glad to have your views as to my clients' liability in the matter.

A. It is hardly correct to speak of the questioner's clients " working the quarry in pursuance of their statutory power " under the Quarries Act, 1894. The latter is not an enabling Act, and does not legalise nuisances, but is a restricting Act,

viz., "to provide for the better Regulation of Quarries." The mining inspector is merely authorised to see that the provisions of the Metalliferous Mines Regulation Acts are being observed, and also that the Factory Acts (so far as applicable) are being complied with. The inspector may have acquiesced in the operations, but could only say they were in order to the extent that accidents were adequately guarded against. The effect of the blasting operations outside, however, are matters for the court to consider. From the point of view of negligence, see *Miles* v. *Forest Rock Granite Company* (1918), 34 T.L.R. 500. The present case, however, appears to be one of nuisance, which is, doubtless, getting worse as the area of operations is extended. The questioner's clients appear to be liable in damages, and—if the nuisance becomes worse—an injunction may eventually be granted. The question is one of degree, depending on the facts proved in evidence.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

"When Tracy's generous soul shall swell with pride,
And Eyre his haughtiness shall lay aside,
Then shall I cease my charmer to adore,
And think of love and politics no more."

These lines are the best possible testimony to the good qualities of Mr. Justice Tracy, for their author, the Duke of Wharton, seems to have been alone in finding fault with the demeanour of Mr. Justice Eyre. A more formal tribute to Tracy, J., says that he was "a complete gentleman and a good lawyer, of a clear head and honest heart and delivered his opinion with that genteel affability and integrity that even those who lost a cause were charmed with his behaviour." Born in 1655, he was called to the Bar at the Middle Temple in 1680. In 1699 he was appointed a Justice of the Irish King's Bench, but was next year transferred to the English Court of Exchequer. In 1702 he was moved to the Common Pleas, where he remained till he retired in 1726, on a pension of £1,500 a year. This he enjoyed for nine years, finally dying at his country seat of Coscomb in Gloucestershire, on the 11th September, 1735, at the age of eighty.

THE VACATION JUDGE.

The Long Vacation which began so ill for Humphreys and Atkinson, JJ., now at last sees them both emancipated from the servitude of their respective tasks. The latter, just before his happy release was, however, informed by counsel in the course of a motion relating to a bathing pool that the bathing season is practically at an end, on which he pathetically remarked: "Really, I haven't started my holidays yet." Nevertheless, it is to be hoped that holidays or no holidays he has not enjoyed fewer opportunities than Vice-Chancellor Shadwell, who once granted a vacation injunction while disporting himself in the Thames. Lord Darling has feelingly sung the sorrows of the Vacation Judge:—

"My house half closed, when eve descends
I to the club betake me;
The painters have replaced my friends
Does all the town forsake me?
Aye, all and as I turn to leave
A clerk without compunction
Runs up to pluck me by the sleeve
And crave a curt injunction.
Still, other clubs with open doors,
Whilst ours is shut, invite me;
I enter. All the gathered bores
From three closed clubs requite me."

TESTAMENTARY RECRIMINATION.

A short while ago, among the wills proved, an unusual number of disinheritances figured. For those not practically interested, it is amusing enough to see a layman expressing indignation in what he takes to be legal language, as in the clause in which one of these testators declared that his wife "did order me out of the house by telling me to go and go quick, which I did, and by so ordering me out, she did forfeit all legal claim to me or anything I own." In this class of composition, the will of John George of Lambeth who died in June, 1791, takes a high place. He wrote: "Seeing that I have had the misfortune to be married to the aforesaid Elizabeth who ever since our union has tormented me in every possible way; that not content with making game of all my remonstrances, she has done all she could to render my life miserable; that heaven seems to have sent her into the world solely to drive me out of it; that the strength of Samson, the genius of Homer, the prudence of Augustus, the skill of Pyrrhus, the patience of Job, the philosophy of Socrates, the subtlety of Hannibal, the vigilance of Hermogenes would not suffice to subdue the perversity of her character; weighing maturely and seriously all these considerations, I have bequeathed and I bequeath to my said wife Elizabeth the sum of one shilling to be paid unto her within six months after my death."

Rules and Orders.

THE INDICTABLE OFFENCES RULES, 1933.
DATED AUGUST 23, 1933.

1. These Rules may be cited as the Indictable Offences Rules, 1933.

2. These Rules shall come into operation on the 1st day of September, 1933.

3. The amendments specified in the second column of Part I of the Schedule to these Rules shall be made in the forms in the Schedule to the Indictable Offences Act, 1848,(*) mentioned in the first column of that Part.

4. The amendments specified in the second column of Part II of the Schedule to these Rules shall be made in the form in the Schedule to the Indictable Offences Rules, 1926,(†) mentioned in the first column of that Part.

Dated the 23rd day of August, 1933.

Sankey, C.

SCHEDULE.

PART I.

Forms in Schedule to the Indictable Offences Act, 1848.	Amendments.
Form (F.)	For the words "being found" there shall be substituted the words "being preferred and signed." For the words "found by the grand jury" there shall be substituted the words "preferred and signed."
Form (P.1.)	For the words from "before the grand jury" to "for the same" (inclusive) there shall be substituted the words "upon the trial of any indictment against the said *A.B.* for or in respect of the said offence."
Form (S.1.)	For the words from "such indictment" to "the same" (inclusive) there shall be substituted the words "and take his trial upon any indictment against him for or in respect of the charge aforesaid."

PART II.

Form in Schedule to the Indictable Offences Rules, 1926.	Amendments.
Form (O.1.)	In the Condition to Prosecute and give Evidence, for the words from "thereon *to the jurors who*" to "trial of the Accused" (inclusive) there shall be sub-

* 11-2 V. c. 42. † S.R. & O. 1926 (No. 676) p. 357.

stituted the words "upon the trial thereof": and the marginal note shall be deleted.

In the Condition to give Evidence, for the words from "any *bill of* indictment" to "trial of the Accused" (inclusive) there shall be substituted the words "the trial of any indictment against the Accused": and the marginal note shall be deleted.

In the Condition to give Evidence conditionally upon notice being received, for the words from "any indictment" to "the trial of" (inclusive) there shall be substituted the words "the trial of any indictment against."

Legal Notes and News.

Honours and Appointments.

It is announced from the Colonial Office that the King has been pleased to approve the appointment of Mr. A. D. A. MACGREGOR, Attorney-General, Kenya, to be Chief Justice of the Supreme Court of Hong-Kong, on the retirement of Sir Joseph Horsford Kemp, C.B.E.

Mr. W. G. MACQUARRIE, K.C., formerly Conservative Member for the New Westminster Division in the Canadian Parliament, has been appointed Judge of the Court of Appeals, British Columbia.

Mr. W. O. DODD, Assistant Solicitor to the Wallasey Corporation, has been appointed Assistant Solicitor to the Brighton Corporation. Mr. Dodd was admitted a solicitor in 1929.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

THE SHORTAGE OF WATER.

In view of the shortage of water, the Minister of Health, on the 5th inst., made the following statement to representatives of the Press:—

The drought is sufficiently serious to need immediate attention on the part of all responsible local authorities, to conserve supplies, protect health, and secure distribution by emergency measures if necessary.

The Ministry of Health through its special staff has been doing what can be done by immediate action to mitigate the evils of the state of affairs. It has issued a memorandum to the authorities where serious shortage has occurred, making suggestions by way of first aid for the conservation of supplies (for example, by careful attention to all leakages and the use, when available, of non-potable water for other than domestic purposes) and indicating the precautions to be taken to prevent danger to public health, including chlorination when the purity of the water is threatened. The authorities are urgently cautioned about this last matter, and are asked to warn the public to exercise strict economy in their consumption of water for domestic and garden purposes.

The Engineering Inspectors of the Ministry, who, in the course of their duties, visit most parts of the country, are generally in touch with the situation, report periodically on it, and are ready to advise on the spot as to the steps to be taken.

According to the records the shortage in domestic water supplies to date is not so serious as in the droughts of the summers of 1921 and 1929. The most important periods of the year for water supply are spring and early summer and the rainfall at that time was generally plentiful. Generally there is no present shortage in the large gathering grounds which supply the big towns or in those areas which rely on underground sources reached by deep wells. Where the serious shortage exists is in some rural areas, which at present have to rely on shallow wells and small surface supplies, for example, in some parts of Lincolnshire and North Wales.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 14th September, 1933.

	Div. Months.	Middle Price 6 Sept. 1933	Flat Interest Yield.			†Approximate Yield with redemption		
			£	s.	d	£	s.	d.
ENGLISH GOVERNMENT SECURITIES								
Consols 4% 1957 or after	FA	108¼	3	13	11	3	9	5
Consols 2½%	JAJO	73½xd	3	8	0	—		
War Loan 3½% 1952 or after	JD	100¼	3	9	10	3	9	8
Funding 4% Loan 1960-90	MN	111½	3	12	0	3	7	5
Victory 4% Loan Av. life 29 years	MS	109	3	13	5	3	10	0
Conversion 5% Loan 1944-64	MN	116¾	4	5	8	3	3	6
Conversion 4½% Loan 1940-44	JJ	110¼	4	1	7	2	17	3
Conversion 3½% Loan 1961 or after	AO	99xd	3	10	8	—		
Conversion 3% Loan 1948-53	MS	98¼	3	1	1	3	2	6
Conversion 2½% Loan 1944-49	AO	94xd	2	13	2	2	19	7
Local Loans 3% Stock 1912 or after	JAJO	85¾xd	3	9	11	—		
Bank Stock	AO	350½	3	8	6	—		
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	76	3	12	4	—		
India 4½% 1950-55	MN	108½	4	2	11	3	16	2
India 3½% 1931 or after	JAJO	84½xd	4	2	10	—		
India 3% 1948 or after	JAJO	72½xd	4	2	9	—		
Sudan 4½% 1939-73	FA	110	4	1	10	2	10	3
Sudan 4% 1974 Red. in part after 1950	MN	108	3	14	1	3	7	6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	101	2	19	5	—		
COLONIAL SECURITIES								
*Australia (Commonw'th) 5% 1945-75	JJ	107	4	13	5	4	4	10
Canada 3½% 1930-50	JJ	99	3	10	8	3	11	7
*Cape of Good Hope 3½% 1929-49	JJ	100	3	10	0	3	10	0
Natal 3% 1929-49	JJ	94	3	3	10	3	10	5
New South Wales 3½% 1930-50	JJ	94	3	14	6	3	19	10
*New South Wales 5% 1945-65	JD	106	4	14	4	4	6	11
*New Zealand 4½% 1948-58	MS	105	4	5	9	4	0	5
*New Zealand 5% 1946	JJ	109	4	11	9	4	0	9
*Queensland 4% 1940-50	AO	100xd	4	0	0	4	0	0
*South Africa 5% 1945-75	JJ	111	4	10	1	3	16	8
*South Australia 5% 1945-75	JJ	107	4	13	5	4	4	10
*Tasmania 3½% 1920-40	JJ	99	3	10	8	3	13	6
Victoria 3½% 1929-49	AO	94xd	3	14	6	4	0	3
*W. Australia 4% 1942-62	JJ	100	4	0	0	4	0	0
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	84	3	11	5	—		
Birmingham 4½% 1948-68	AO	111xd	4	1	1	3	10	10
*Cardiff 5% 1945-65	MS	109	4	11	9	4	0	9
Croydon 3% 1940-60	AO	92xd	3	5	3	3	9	3
*Hastings 5% 1947-67	AO	112xd	4	9	3	3	17	6
Hull 3½% 1925-55	FA	98	3	11	5	3	12	8
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98xd	3	11	5	—		
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72½	3	9	0	—		
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85	3	10	7	—		
Manchester 3% 1941 or after	FA	84	3	11	5	—		
Metropolitan Consd. 2½% 1920-49	MJSD	92½	2	14	1	3	2	1
Metropolitan Water Board 3% "A" 1963-2003	AO	86xd	3	9	9	3	10	10
Do. do. 3% "B" 1934-2003	MS	87	3	9	0	3	10	0
Do. do. 3% "E" 1953-73	JJ	95	3	3	2	3	4	6
*Middlesex C.C. 3½% 1927-47	FA	100	3	10	0	3	10	0
Do. do. 4½% 1950-70	MN	113	3	19	8	3	9	5
Nottingham 3% Irredeemable	MN	84	3	11	5	—		
*Stockton 5% 1946-66	JJ	112	4	9	3	3	16	2
ENGLISH RAILWAY PRIOR CHARGES								
Gt. Western Rly. 4% Debenture	JJ	101½	3	18	10	—		
Gt. Western Rly. 5% Rent Charge	FA	117¼	4	5	1	—		
Gt. Western Rly. 5% Preference	MA	98½	5	1	6	—		
‡L. & N.E. Rly. 4% Debenture	JJ	94½	4	4	8	—		
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	81½	4	18	2	—		
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	98	4	1	8	—		
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	90	4	8	11	—		
Southern Rly. 4% Debenture	JJ	102	3	18	5	—		
Southern Rly. 5% Guaranteed	MA	112	4	9	3	—		
Southern Rly. 5% Preference	MA	99½	5	0	6	—		

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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